Supreme Court of The United States

OCTOBER TERM, 1958

No. .....

B. M. KILGORE, *Petitioner*

versus

THE STATE OF SOUTH CAROLINA, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

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THE STATE OF SOUTH CAROLINA, RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

The Petitioner prays that a Writ of Certiorari issue to review the decision and judgment of the Supreme Court of South Carolina entered in this case on the 17th day of April, 1958.

OPINIONS BELOW

The opinion of the Supreme Court of South Carolina (App. 12) is reported at 103 S.E. 2d 321. The order of the County Court of Greenville County (App. 9) is not reported.

JURISDICTION

The judgment of the Supreme Court of South Carolina was entered April 17, 1958. The jurisdiction of this Court is invoked under the provisions of 28 U. S. C. A. 1257.

QUESTION PRESENTED

Whether the action of law enforcement officers of the State of South Carolina in confiscating four four-fifths of whiskey from Petitioner and causing a warrant to issue against Petitioner charging him with the offense of violating the liquor law of South Carolina violates the Interstate Commerce Clause of the Constitution of the United States under the circumstances of the instant case:

(a) Where Petitioner, a resident of the State of Florida, had bought said whiskey in the State of North Carolina immediately prior to its confiscation and was in transit from the State of North Carolina;

(b) Where Petitioner intended to carry said whiskey with him to the State of Florida;

(c) Where said whiskey was sealed and had not been opened or used by Petitioner.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U. S. Constitution, Art. 1, Sec. 8.

"The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States; . . . .

"To regulate commerce with foreign nations, and among the several states, and with the Indian tribes; . . . .

U. S. Constitution, Amendment XXI, Sec. 2.

"*Transportation of liquor into 'dry' state.*

"The transportation or importation into any state, territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

Sec. 65-1267 of the *Code of Laws of South Carolina*, 1952.

"*Stamps for taxes.*

"The taxes levied in Secs. 65-1265 and 65-1266 shall be paid by affixing stamps on each bottle or container of alcoholic liquors. The stamps shall be cancelled by writing or printing thereon the name of the person first having possession of the same in this State for resale within the State and such other data as may be required by the Commission. In case a bottle is enclosed in a sealed metal container, the Commission, in its discretion, may allow the affixing of the required stamps to the metal container instead of to the bottle. The stamps shall be fixed to the bottle or container immediately upon receipt of the alcoholic liquors contained therein or immediately upon the alcoholic liquors being bottled. The stamps required by this section shall be affixed in such manner that their removal shall require continued application of steam and water. When stamps have been once affixed as

provided in this section no other or further stamps shall be required, regardless of how often such alcoholic liquors may be sold or resold within this State."

Sec. 65-1270 of the *Code of Laws of South Carolina*, 1952.

"*Possession of unstamped bottles containing alcoholic liquor.*

"It shall be unlawful for any person to have in possession any bottle or other package containing alcoholic liquor to which the revenue stamps required by Sec. 65-1267 have not been affixed."

STATEMENT OF CASE

During the month of August 1957, Petitioner, a resident of the State of Florida, came to Greenville, South Carolina for the purpose of visiting a friend and during said visit, to-wit, on the 17th day of August, 1957, rode to Hendersonville, North Carolina in an automobile belonging to the friend he was visiting and, upon leaving Hendersonville, went to Tryon, North Carolina. While in Tryon, Petitioner purchased four four-fifths of whiskey for the purpose of carrying the same with him back to his home in Florida. Upon leaving Tryon and entering Greenville County, South Carolina, certain agents of the South Carolina Tax Commission stopped the driver of the automobile in which Petitioner was riding, arrested Petitioner and charged him with having said whiskey unlawfully in his possession inasmuch as the same did not have affixed there to South Carolina revenue stamps, upon which charge Petitioner was convicted by the Trial Magistrate in Greenville, South Carolina. Upon an appeal by Petitioner to the Greenville County Court on the ground that said whiskey was being transported in interstate commerce said conviction was reversed and set aside. Respondent appealed to the Supreme Court of South Carolina and the Supreme Court reversed the County Judge, holding that the whiskey was not in interstate commerce at the time of Petitioner's arrest.

REASONS FOR GRANTING THE WRIT

The Supreme Court of South Carolina in its decision stated that since the adoption of the Twenty-first Amendment, each State has power, unfettered by the Commerce Clause, to regulate or prohibit the importation of intoxicating liquor for delivery or use within its borders. The Court further stated that it may impose reasonable regulations upon the transportation of liquor through its territory from one neighboring State to another. Section 65-1270 of the *Code of Laws of South Carolina*, 1952, as amended in 1956, does not, however, purport on its face to prohibit or regulate interstate shipments of liquor into or through the State of South Carolina to another State. *Johnson v. Yellow Cab Transit Co.*, 321 U.S. 383, 64 S. Ct. 622.

The Statute of South Carolina under consideration in the instant case is to be distinguished from those in the cases of *Duckworth v. Arkansas*, 314 U.S. 390, 62 S.Ct. 311, 86 L.Ed. 294, 138 A.L.R. 1144, and *Carter v. Commonwealth of Virginia*, 321 U.S. 131, 64 S. Ct. 464, cited by the Court below. In these two cases, the Court was confronted with statutes which in clear terms regulated and controlled interstate transportation of whiskey or whiskey transported through those States.

It is conceded by Petitioner that a State may affirmatively regulate whiskey in interstate commerce in the absence of Congressional action.

Section 65-1270 of the *Code of Laws of South Carolina*, 1952, as amended in 1956, the violation of which was charged in the warrant, does not purport to control or regulate the movement of liquor through South Carolina in interstate commerce. It necessarily applies under the authority of the Twenty-first Amendment only with respect to delivery or use of intoxicating liquors within the State of South Carolina.

The undisputed facts are that the whiskey, seized without warrant by the South Carolina officers, was purchased in the State of North Carolina. At the time of the Petitioner's arrest and the seizure of the whiskey in the State of South Carolina, the whiskey was in transit ultimately destined for the State of Florida. There had been neither delivery nor use in South

Carolina. There had been no stoppage in transit and the whiskey was actually moving in interstate commerce at the time of its seizure and the arrest of the Petitioner. *Champlain Realty Co. v. Town of Brattleboro,* 260 U. S. 366, 43 S. Ct. 146.

It is respectfully submitted, for the reasons above stated, that this Court should grant this Petition for a Writ of Certiorari, should reverse the judgment of the Supreme Court of the State of South Carolina and should affirm the Order of the Judge of the Greenville County Court.

Respectfully submitted,

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